A 1990 Postscript

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When I delivered “Four Students” sixteen years ago many shared my optimism about the future course of justice for the victims of that brutal fusillade of military gunfire. For more than three years the Machiavellian deceptions of Nixon, Ehrlichman, Mitchell, and Kleindienst had successfully obstructed justice to protect the covert role played by Robert Mardian’s Internal Security Division in the burning of the ROTC building. If not for the relentless pursuit of the truth, an often heartbreaking crusade spearheaded by the late Arthur Krause, much of what we know today would have remained as buried as those four young people. On that war day in May, the fourth anniversary of the killings, there was a sense of our being on the brink of finally bringing to account those responsible, a feeling that was palpable amongst the thousands who had assembled to hear Jane Fonda and Judy Collins, Ron Kovic and Dean Kahler. The enthusiasm with which the crowd responded to my confident expectations was infectious. Little did we know then that what we thought was going to happen would prove to be nothing more than a political-judicial magic act with mirrors.

The criminal trial of eight Ohio National Guardsmen charged with willfully depriving the victims of their civil rights was abruptly stopped by federal Judge Frank Battisti at the conclusion of the government’s case. Despite the findings of the grand jury that had indicted the eight men, Judge Battisti ruled the evidence was too weak to allow the jury to decide whether or not they were guilty. To compound his circumvention of our trial by jury system, he acquitted them, rather than simply dismissing the charges as is usually done in such situations, and thereby forever shielded the eight from further prosecution no matter how strong a case the Justice Department might subsequently develop from new evidence.

The following year we had to endure the unabashed prejudice of federal Judge Don J. Young during the long civil trial. This paragon of judicial impartiality was so overwhelmed by the status and power of some of the principle defendants he actually rose to his feet to greet Governor James Rhodes with the distinctly un-American salutation “Your Excellency.” It was Judge young who would play the role of eager watchdog for the defense attorneys just in case they missed something during questioning of witnesses. “Aren’t you going to object, Mr. Fulton?” “Huh? Oh! Yes. Objection.” “Sustained.”
Judge Young's biases so pervaded the proceedings, and his convoluted summation so confused the issue at trial, the jury was left with little choice but to find favor of the defendants. Small wonder two of the female jurors wept as they affirmed their verdict when the jury was polled for the record. In Washington the feisty old senior senator from Ohio, Stephen M. Young, told reporters "the biggest mistake of my life was to recommend to President Kennedy the appointment of my nephew to the federal bench."

During the hot summer of 1975 the Kent State family unit that the late Rev. John P. Adams had forged and nurtured with such devotion went through a crisis of cataclysmic proportions. Differences of opinion on legal strategy and personality conflicts took a heavy toll, and the verdict against the plaintiffs was a blow so devastating some of us, myself included, never fully recovered from its impact. What had happened to what one law professor categorized as "the greatest civil rights case since Brown vs. The Board of Education?" Precious blood had been needlessly shed with such a ruthless determination on the part of a few angry guardsmen that the anatomy of murder wasn't even a mystery, yet once again this glaring truth was inexplicably denied. Criminal responsibility had been negated by Judge Battisti, and civil liability rejected by a decision that was soul destroying in its irrationality. We were emotionally and mentally drained by the time we heard the verdict in a locked courtroom under the scrutiny of armed U.S. Marshals. There was one interruption in the reading of the decision when Alan Canfora said, in a stage whisper, "There's no justice in America." Judge Young looked sharply at the offending survivor of the shootings, and one of the marshals moved menacingly toward Canfora. I would not have been surprised if he had drawn his gun. Instead he froze when the deep, booming voice of Arthur Krause warned, "Don't you touch that young man."

Afterwards, we stood around in small groups outside the courtroom, dust filled sunbeams mocking the darkness of what had just transpired, our minds dazed with disbelief. The sight of some of the defendants grinning, pumping hands, and back slapping each other made me feel like vomiting. It was as though they were celebrating the killings all over again. I thought of Allison lying in that quiet glen-like cemetery in Pittsburgh, of Jeff, Sandy, and Bill sharing her eternity, and tried to equate it with those smiling faces relishing their hollow victory. I couldn't. It was too obscene. All that I could hear above their congratulatory banter was a chilling echo of, "This time four, next time more."

The promise of justice on that fourth anniversary had faded and withered like a poisoned tree. My great expectations for the future of Kent State University proved to be as naive and misplaced as British Prime Minister Chamberlain's assurance of "peace in our time."

No memorial to the dead was ever quite appropriate to the administration and trustees unless it was proposed by people considered to be friends
of the state, or from within their own ranks. The stunningly symbolic statue of Abraham about to sacrifice his kneeling son was rejected as being "too violent." Such sensitivity stood in sharp contrast to their servile silence when Governor Rhodes publicly vilified student demonstrators as "the worst type of people we harbor in America." The rejection of George Segal's monument spoke volumes about the university, the community of Kent, and the state of Ohio. When Princeton invited the sculptor to unveil his work on its campus it was gratifying to know that this memorial to the bloody consequences of politically manipulated hatred would rest in a more tolerant and serene academic setting than the site of the deed, a haunting spot of grass and tarmac that the university was determined to transfigure by the construction of a gym-annex. Not even the Tent City protest organized by groups like the May 4th Task Force could dissuade the university from the course it had embarked upon, any more than the arrests of protestors such as John Adams, the parents of Sandy Scheuer, and some of the survivors, would move them to consider an alternative location. Once again the shallowness of their sensitivity was demonstrated when bulldozers began to mutilate the site with the same relentless determination that was evinced by those few guardsmen who fired again and again and again at the backs of fleeing students until their clips were empty.

There was no triumph of justice, nor did Kent State University come to be looked upon as a symbol of anything but repression, the Tiananmen Square of Nixon's silent majority's fear of America's flower children.

The settlement of the civil suit several years later brought some solace to some of the plaintiffs, and regardless of its legal and monetary shortcomings, the settlement also brought a positive conclusion to almost a decade of frustration and bitter disillusionment. It could have been a lot worse, and may very well have been but for the lonely battle Arthur and I fought in 1970 to establish a beachhead in our quest for the truth about Kent State.

A long time ago John Adams presented me with a handsomely framed biblical quotation: "Justice, justice shalt thou follow that thou mayest live, and inherit the land which the Lord thy God giveth thee" (Deuteronomy 15:20). As much as this exhortation is very dear to my heart I have learned the hard way that to honor it is to take on judicial dragons and bureaucratic windmills in an endless struggle that can never really be won. For each wrong put right there are always a dozen more injustices crying out for relief.

Injustice in our criminal justice system, for example, is so pervasive it has become an integral part of the system, and its victims all too often as isolated from help and hope as would be an astronaut lost in space. During my 1974 speech I mentioned the plight of Patricia Hearst. Not surprisingly, she was vigorously persecuted by the government and thrown in prison for the sins of her grandfather. Unlike most, however, her family had enough influence to secure the presidential pardon she deserved, but for the tens of
thousands serving draconian sentences, and the hundreds who are innocent, there is no such hope.

By the end of the 1970s I was spent. The very words Kent State turned my stomach. So much had been given by so few in a cause so just it did not seem possible that not one official or guardsman had so much as had his wrist slapped for killing Allison, Sandy, Jeff and Bill. I swore I would never again do battle with those dragons and windmills but I did, this time on behalf of a mother of four caught up in our criminal justice system like a fly in a web.

Just as my involvement in the Kent State case opened my eyes to the machinations of the Nixon administration and the self-serving hypocrisy of Governor Rhodes and his National Guard generals, so my friendship with this courageous woman, a spirited paralegal fighting the injustice of her sentence from behind bars, has given me a comprehensive education in American penology. During the past two years I have learned just how morally bankrupt this system has become, a cancer that is fed as much by our total disinterest in what goes on in our courts and prisons as it is by judges wantonly abusing their power.

I'm not talking about brutal murderers and vicious rapists, but battered women in Minnesota condemned to fifty years without parole for daring to finally save themselves by killing their batterers, and about my friend, also a battered spouse, sentenced by a Colorado judge to forty years in prison for theft of property worth $2,648. As it was with Kent State so it is with this sickening example of judicial madness. Letters and phone calls can only accomplish so much before the need for legal clout become imperative. The attorney I retained in Denver has so far succeeded in persuading this judicial curmudgeon to reduce her sentence to sixteen years, a gesture to mercy that is as unacceptable and offensive as was the Ohio whitewash of May 4, 1970. So this struggle will continue and I cannot rest until she is freed.

The Vietnam war, and the student movement to stop it, tore at the fabric of our cherished values and the fundamental principals of our democracy. America was being torn asunder by a clash of such diverse perceptions of the war that the conflict between patriotism and patriotic dissent became an emotionally bitter struggle of frightening intensity that turned parents against their children, neighbor against neighbor.

As the war dragged on and the casualties mounted so the antiwar movement grew in numbers and determination. Inevitably there were excesses on both sides and disagreement deteriorated into outright hatred, debate into a war of inflammatory, mindless slogans. Demonstrating students waved NLF flags for TV cameras without a second thought for the grieving mothers who might see them on the evening news, parents alone in the agony of their losses to a political crusade few could explain and none understand. Outraged vets in Nixonite hard hats clubbed down protestors
and bystanders alike as they chanted "USA All The Way." Antiwar extremists bombed a university building in Wisconsin, an act of terror that claimed the life of a young mathematician working late. A Mississippi physician wrote an Op-Ed page article for the New York Times in which he said that if his daughter was shot by the National Guard because she was demonstrating against the war instead of being in class he would invite the guardsman who killed her to his home to have dinner with him.

The passions that built up prior to 1970 erupted into a vitriolic volcano of senseless, destructive venom after the killings at Kent State. When two black students at Jackson State University were killed ten days later during a 28-second barrage of police, highway guard, and National Guard gunfire, there was a feeling the war had come home with a vengeance, that many more students would be slaughtered before the volcano subsided and reasonable minds in and out of government given an opportunity to begin healing wounds and mending fences. The Watergate scandal contributed a great deal to that process of reconciliation. The idol of the hard hats had fallen in disgrace, and in 1979 Craig Stern of NBC News produced the proof of that truth about Kent State we had for so long, a "for your eyes only" memorandum from John Ehrlichman to U.S. Attorney General John Mitchell dated 11 November 1970, reminding Mitchell of President Nixon's order that "under no circumstances" was Mitchell to convene a federal grand jury. Obstruction of justice by the man who had so solemnly sworn to defend, protect and uphold our Constitution. Worse, of course, was to follow.

The fallout from the war at home and Watergate buried most of the once vociferous supporters of our military involvement in Vietnam and Cambodia. The returning vets were generally treated with contempt, as if they were responsible for all the nation's woes. Almost 60,000 of our sons had come home in flag-draped caskets, young men who had done their duty for God and country, like hundreds of thousands before them, yet even they were not immune to criticism. It became increasingly difficult to find anyone who had supported the war in Vietnam, and the scarred vets bore the brunt of this swing in national sentiment.

The lessons to be learned from that dark era in our history have been taught in our grade schools since 1776. The essence of freedom is the right to be able to speak out without fear of retribution. No matter how unpopular a cause or idea might be we cannot tolerate any attempt to suppress it by unconstitutional means no matter how expedient such means may seem to be at the time. And above all we must always listen to our young people. We do not have to agree with them all the time, but we do have to listen. In the late Sixties we did not listen, so we paid a heavy price for our mistake.

For me a degree of peace did not come until one morning in the summer of 1983 when my wife, Dorothy, showed me the modest Vietnam war
memorial at the American Express Plaza in downtown Manhattan. We were reading the names of a few of the fallen when I saw inscribed on the wall the first paragraph of a May 4, 1970 wire service story: "KENT, Ohio (UPI)—Four students...." I put my hand between this and the name of a private from Oklahoma killed in 1969. There was nothing to say, only to feel, that terrible ache when we pause long enough in our hectic day to day existence to really think about the significance and meaning of Kent State. The son from Oklahoma died defending the Constitution that Allison, Sandy, Jeff and Bill were upholding by exercising the rights it bestows on us all. For the first time I felt and saw that there had never been any difference between these five victims of forces beyond their control, only what President Nixon had wanted us to see. If ever a period in our history since the Civil War deserves the sobering epitaph, "We have seen the enemy and it is us," this is the one.

Twenty years have passed since it happened. They would be turning forty now, most likely married with children, and worrying about escalating college costs. What might have been. On this twentieth anniversary of their unnecessary, so very unwarranted, and totally inexcusable deaths, it is appropriate that this country should also be celebrating the 200th anniversary of the Bill of Rights.

Martin and Sarah Scheuer (bottom left) participating in the civil disobedience which led to the mass arrests of the Kent 194, during the gym controversy. Photo © by John P. Rowe.